IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHARLES FELL	:	CIVIL ACTION
v.	:	
JOSEPH W. RILEY COMPANY, INC. and AMERICAN FINANCIAL GROUP	:	NO. 99-1324

MEMORANDUM AND ORDER

HUTTON, J. October 4, 1999

Presently before the Court is Defendant's, Joseph W. Riley Company, Inc. ("Riley"), motion to dismiss pursuant to the Federal Arbitration Act, 9 U.S.C. § 4, or alternatively pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure (Docket No. 4). In addition, before the Court is Defendant's, American Financial Group ("American"), motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure (Docket No. 6). Plaintiff, Charles Fell, opposes both Defendants' motions (Docket No. 5 & 7). For the following reasons, the Court dismisses Plaintiff's complaint without prejudice and directs that the dispute is to be resolved pursuant to the arbitration agreement.

I. BACKGROUND

On November 23, 1983, Plaintiff and Defendant Riley entered into an employment contract whereby Plaintiff was to be employed by Riley as a vice-president in marketing for a period of twenty-two (22) years, subject to certain termination provisions. (See

Employment Contract at 1 & ¶¶ 2, 3). The contract between the parties contains an arbitration clause relating to any disputes relative to said contract. (See Employment Contract ¶ 14). On or about March 9, 1998, Plaintiff was terminated by Riley for a reason not presently before this Court. Plaintiff asserts, that pursuant to a clause in the Executive Compensation Plan he is due approximately $62,784.21, which represents the Plan's surrender value. (See Pl.'s Resp. to Def. Riley's Mot. to Dismiss at 2, 3). Plaintiff brings this instant action to recover claimed benefits alleging violations of the Employment Retirement Income Security Act ("ERISA"). Defendant Riley asserts that this matter is subject to the arbitration clause contained within the employment contract which was duly signed by the parties. (See Def. Riley's Mot. to Dismiss at 2).

II. STANDARD OF REVIEW

The Federal Arbitration Act ("FAA") provides in relevant part that:

> [a] written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for revocation of any contract.

9 U.S.C. § 2 (1999); see also Seus v. John Nuveen & Co., Inc., 146 F.3d 175, 178 (3d Cir. 1998).

When a party "to a binding arbitration agreement is sued in a federal court on a claim that the plaintiff has agreed to

arbitrate, it is entitled under the FAA to a stay of the court proceeding pending arbitration . . . and an order compelling arbitration." Seus, 146 F.3d at 179. If all the claims involved in the action are arbitrable, the Court may dismiss the action rather than staying it. See id. Generally, when determining the scope of an arbitration clause, courts operate under a "presumption of arbitrability in the sense that '[a]n order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.'" See Battaglia v. McKendry, 1999 WL 570861, at *4 (E.D. Pa. Aug. 3, 1999) (quoting AT & T Techs. v. Communications Workers, 475 U.S. 643, 650 (1986)). When a valid arbitration agreement exists, statutory ERISA claims are subject to compulsory arbitration. See Pritzker v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 7 F.3d 1110, 1122 (3d Cir. 1993).

III. DISCUSSION

Defendant Riley asserts that Plaintiff has incorrectly brought this matter to federal court because the dispute concerning the payment of benefits must be resolved according to the arbitration clause in the employment contract. (See Employment Contract ¶ 14); see also Great W. Mortgage Corp. v. Peacock, 110 F.3d 222, 227 (3d Cir. 1997)(holding that the FAA's mandatory arbitration provision applies to employment contract

unless the worker is employed directly in the channels of commerce itself). Consequently, this Court must determine if the arbitration clause's scope is such that this matter falls within it. Before making this evaluation, the Court notes that Plaintiff tacitly asserts that the employment contract is not valid because it is wanting of consideration. (See Pl.'s Resp. to Def. Riley's Mot. to Dismiss at 2, 4).

Under Pennsylvania law, absent a contractual or statutory provision to the contrary, it is presumed that the employment relationship is at-will and that either party may end the relationship at any time, for any reason or no reason. See Woo v. Centocor, Inc., 1995 WL 672389, at *3 (E.D. Pa. Nov. 9, 1995). Consideration is defined as "[s]ome right, interest, profit or benefit accruing to one party, or some forebearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other." See Blacks's Law Dictionary 306 (6th ed. 1990); see also Restatement (Second) of Contracts, §§ 17(1), 71. The employment contract between Riley and Plaintiff sets a specific term of employment of twenty-two (22) years, subject only to certain limited rights of termination. (See Employment Contract ¶¶ 2, 3). Such a provision by Riley in Plaintiff's favor fits squarely into the notion of consideration as Plaintiff is now no longer an at-will employee, and Riley has suffered a legal detriment.

Clearly, the employment contract is supported by adequate consideration. As the Plaintiff raises no additional grounds for finding a contractual defect, the Court must next consider the scope of the arbitration agreement itself.

The employment contract contains an arbitration clause which states that "[a]ny controversy, dispute, difference arising out of or relative to this Agreement or breach thereof . . . shall first be submitted to settlement by arbitration . . . ." (See Employment Contract ¶ 14) (emphasis added). The employment contract also contemplates the possibility of future medical, life insurance, disability, and retirement plans in which Plaintiff will have the right to participate. (See Employment Contract ¶¶ 8) (emphasis added). While this clause does not specifically mention future Executive Compensation Plans, nevertheless it is contemplated within the scope of "retirement plans." The very terms of the Executive Compensation Plan specifically states that the "Company shall make every effort to achieve such a retirement benefit for each Participant, but the actual cash value of the Policy at retirement will depend on the underlying investments." (See Executive Compensation Plan ¶ 4) (emphasis added). Given that the Executive Compensation Plan can be rationally classified within the meaning of "retirement plans," it is reasonably contemplated in the initial employment contract. As such, the language in the employment contract's

arbitration clause is sufficiently broad as to cover the instant matter. The proper forum to address this matter is through arbitration, not the federal court.

An appropriate Order follows

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHARLES FELL	:	CIVIL ACTION
	:	
v.	:	
	:	
JOSEPH W. RILEY COMPANY, INC.	:	
and AMERICAN FINANCIAL GROUP	:	NO. 99-1324

O R D E R

AND NOW this 4th day of October, 1999, upon consideration of the Defendants' Motions to Dismiss (Docket No. 4 & 6) and the Plaintiff's Response thereto (Docket No. 5 & 7), IT IS HEREBY ORDERED that:

(1) Defendant Joseph W. Riley Company, Inc.'s Motion to Dismiss and Compel Arbitration is **GRANTED**. Pursuant to the Federal Arbitration Act, 9 U.S.C. § 4, all claims are DISMISSED without prejudice. The parties are to arbitrate these claims pursuant to the terms of the arbitration agreement;

(2) IT IS HEREBY FURTHER ORDERED that Defendant Joseph W. Riley Company, Inc.'s Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) is **DENIED**; and

(3) IT IS HEREBY FURTHER ORDERED that Defendant American Financial Group's Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) is **DENIED AS MOOT**.[1]

BY THE COURT:

_____
HERBERT J. HUTTON, J.

[1] As the Court has dismissed the action in its entirety, Defendant American Financial Group's motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) is moot.